IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CRIMINAL WRIT PETITION NO.1773 OF 2004

Shri G.G.A. Naidu .. Petitioner

Vs.

1. The State of Maharashtra and anr. .. Respondents

Mr. Parvez Ubharay with Mr. Osman Chisty for Petitioner.
Mr.V.B. Konde-Deshmukh, APP for Respondent No.1.
Mr. H.V. Mehta for Respondent No.2.

CORAM : S.S. PARKAR & S.R. SATHE, JJ.

Date : November 29, 2004.

P.C.:

1. The petitioner who is being prosecuted since the year 1971 for the offence under Sections 5(1)(e) and 5(2) of the Prevention of Corruption Act, 1947 has challenged his prosecution essentially on two grounds i.e. delay and want of valid sanction granted by competent authority.

2. This litigation has undergone a chequered history. The petitioner was at the relevant time working as Income Tax Officer, Group "B". The prosecution commenced when he was posted at Nagpur. The investigation had started and the complaint was

lodged by CBI in Bombay and was transferred to Nagpur as witnesses were mostly in Nagpur. At that stage, the prosecution was challenged by the petitioner on various grounds, including validity of sanction. By the order dated 24/11/1980, the Special Judge, Nagpur had discharged the accused, inter alia, on the ground of non-application of mind by the Sanctioning Authority, but the said order at the same time had given liberty to the CBI to prosecute the petitioner after obtaining regular and proper sanction. It is not in dispute that that sanction order was granted by the Commissioner of Income Tax. Thereafter CBI obtained fresh sanction order dated 17/1/1981 which was issued by the Under Secretary to the Government of India and prosecution was again initiated against the petitioner in Bombay.

3. The new sanction order was issued under Section 6(1)(c) of the Prevention of Corruption Act, 1947. The said sanction order was again challenged by the petitioner so also prosecution on various grounds. One of the grounds on which the sanction order was challenged was that Central Government was not competent to issue sanction but it was the Commissioner of Income Tax who was the appointing and removing authority of the petitioner and was competent

to issue the sanction order. Pursuant to the said challenge, the then Special Judge, Gr. Bombay had allowed the parties to lead evidence and accordingly the evidence of Sanctioning Authority i.e. K.G. Goel, who was Under Secretary to the Government of India had been led. Thereafter Cri. Writ Petition No.991 of 1993 was filed before the Single Judge of this Court for discharge of the petitioner on various grounds which came to be disposed of by the learned Single Judge of this Court on 10/6/2002. While disposing of the said writ petition, this court had remanded the matter to the trial court observing that the preliminary points or the objections raised by the petitioner demand adjudication by the trial court itself. It was, however, observed that one witness had already been examined on behalf of the prosecuting agency and the trial court could recall that witness, if so needed, for recording his evidence in the interest of justice. Accordingly, points raised in the above writ petition before the learned Single Judge of this Court and earlier before the trial court were reagitated before the present Special Judge, Gr. Bombay. After hearing both the sides, the learned Special Judge had dismissed the application for discharge being Misc. Application No.34 of 2003 by his order dated 10/6/2004 which is impugned in the

present writ petition filed by the petitioner-accused.

4. In this petition mainly two grounds have been urged on behalf of the petitioner. Firstly, it is argued that there has been considerable and inordinate delay in prosecuting the petitioner which has affected his fundamental right to a speedy trial. It is stated that after the filing of the initial FIR in the year 1971, charge-sheet came to be filed in the year 1974 and the petitioner was discharged in November, 1980. Thereafter second complaint came to be lodged in January 1981.

5. So far as the delay aspect is concerned, the earlier order of the learned Single Judge of this Court dated 10/6/2002 has not allowed the petition on that ground but directed the trial court to dispose of the trial expeditiously after considering preliminary points raised by the petitioner. We also see no reason to allow the petition on the ground of delay as initially the charge-sheet had been filed by the prosecuting agency within a period of three years and the matter had remained pending for trial because the petitioner had earlier applied to the trial court for discharge on various grounds pursuant to which the prosecuting agency had to lead the evidence of

Sanctioning Authority. No doubt, the Sanctioning Authority was not made available for being examined in the court regularly but he was made available in the court after gaps of certain periods.

6. So far as the point of competence of Sanctioning Authority is concerned, it has been contended on behalf of the petitioner that sanction order dated 17/1/1981 which is purported to be issued under Section 6(1)(c) of the Act is bad in law as the Central Government is not the appointing or removing authority so far as the petitioner is concerned. According to the petitioner, after his selection by Union Public Service Commission in IAS Cadre he was appointed as Income Tax Officer under Part II - Central Civil Services, Group 'B' by the Commissioner of Income Tax which is the authority competent to impose penalty and penalties on the petitioner and, therefore, under Section 6(1)(c) it was the Commissioner of Income Tax who alone was competent to issue sanction order to prosecute the petitioner. The said point requires consideration. The sanction order which is purported to be issued under Section 6(1)(c) of Prevention of Corruption Act is required to be issued by the authority which is competent to remove a person from his office. In the case of the petitioner

it is the Commissioner of Income Tax who is competent to remove from his office and, therefore, his sanction was necessary under Section 6(1)(c) of the Act.

7. On behalf of the respondent no.2 it is contended that Central Government is also entitled to grant sanction under Section 6(1)(c) of the Act. Mr. Mehta submitted that petitioner was selected in IAS examination conducted by the Union Public Service Commission and the petitioner being employed in connection with the affairs of Union, Central Government was competent to grant sanction. However, we find that the sanction order itself is issued under Section 6(1)(c) and not under Section 6(1)(a) of the Act. Secondly, Union Public Service Commission had only selected the petitioner and his selection by the Union Public Service Commission does not mean that he was appointed in service by the Union of India. In order to attract the provisions of Section 6(1)(a) what is required is that the person is not removable from his office save by or with the sanction of the Central Government. Mr. Mehta appearing for Respondent No.2 has not been able to show us any provision or rule under which the petitioner was not removable except with the sanction of the Central Government. The rules clearly indicate that the

Commissioner of Income Tax is the authority who could remove the petitioner. It was on that basis that the earlier sanction order was issued by the Commissioner of Income Tax. Mr. Mehta, however, contends that previous sanction was challenged by the petitioner, inter alia, on the ground that Commissioner of Income Tax was not competent to issue sanction order. But that contention was expressly negatived by the Special Judge in his order dated 24/11/1980 and the sanction order was held bad only for non application of mind.

8. Mr. Mehta lastly submitted that trial court may be directed to consider the said point as the impugned order has not given reasons on the said point. When the aforesaid points were raised and the evidence of K.G. Goel, the Under Secretary to the Government of India was led on behalf of the prosecuting agency and despite the clear directions by the learned Single Judge of this Court in his order dated 10/6/2002 in the earlier Cri.W.P. No.991/93, the Special Judge has not considered the point of validity of sanction by the impugned order. In the order dated 10/6/2002 the learned Single Judge of this Court had directed that the trial court should decide the preliminary points that may be raised by the petitioner before the trial begins. Moreover, under

Section 6 of the Act no court can take cognizance of an offence punishable, inter alia, under Section 5(2) of the Act, except with the previous sanction issued by the appropriate authority. It would be, therefore, futile for the trial court to proceed with the trial unless it is satisfied that a valid sanction has been granted by the competent authority. Instead of considering the points raised on behalf of the petitioner regarding the validity of the sanction on the ground of incompetence of the sanctioning authority, the Special Judge has just dismissed the application for discharge without giving reasons but simply observing that in his opinion it was ex facie a valid sanction and kept the point open. He has also given the option to recall the witness during the trial of the case, obviously to prove the validity or otherwise of sanction to prosecute the petitioner. Section 6 of the Act itself prohibits the court from taking cognizance of the case unless there is a valid sanction granted for the prosecution of the accused and, therefore, it is imperative for the trial court to prima facie satisfy itself that valid sanction had been granted for the prosecution of the accused before he is made to face the trial. When the evidence of Sanctioning Authority was led on behalf of the prosecuting agency, the trial court ought to have

first satisfied itself whether a valid sanction had been granted by the competent authority or not for prosecution of the petitioner before proceeding with the trial.

9. In view of the above, we set aside the impugned order of the Special Judge dated 10/6/2004 in Misc. Application No.34 of 2003 and direct the Special Judge to consider and give finding on the point of validity of sanction raised by the petitioner before proceeding with the trial. Since the trial is already delayed the Special Judge is directed to give finding on the said point in the light of the evidence led by the Sanctioning Authority and the rules in that behalf expeditiously. Petition is disposed of accordingly.

(S.S. Parkar, J.)

(S.R. Sathe,J.)